

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8426 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KISHANBHAI MANJIBHAI THAKER

Versus

STATE OF GUJARAT

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Appearance:

MR CL SONI for Petitioner

MR MA BUKHARI APP for Respondent No. 1

RULE SERVED for Respondent No. 2, 3, 4

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 05/05/99

ORAL JUDGEMENT

Heard learned advocates for the respective parties.

2. The petitioner before this Court is the detenu who has been ordered to be detained in custody by the District Magistrate, Banaskantha under his order dated

4th August, 1998 made under the powers conferred upon him under Sub-section 2 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act']. Alongwith the order of detention, the petitioner has also been served with the grounds of detention.

3. The grounds of detention refers to the anti-social activities being carried on by the petitioner, who by profession is a Journalist. It is stated that in course of his profession, the petitioner habitually blackmails the residents of the area under the threat of publishing matters detrimental to the reputation of such persons in a daily published by him in the name of 'Azaad Man'. It is also stated that the petitioner prints obscene matters in respect of young ladies of the society, that he indulges into drug-trafficking. He is also alleged to have been indulging in extortion. Two criminal cases, being C.R No. 85 of 1998 and C.R No. 95 of 1998 are registered against the petitioner in the Deesa City Police Station. The said offences are publishable under Secs. 384, 509, 114, 506 (2) IPC and Secs. 363, 364 and 302 IPC respectively. Thus, the petitioner is considered to be a dangerous person within the meaning of Section 2 (c) of the Act. The order of detention is based on the investigation papers of the above referred two offences registered against the petitioner in the Deesa City Police Station and the statements of witnesses, whose identity has not been disclosed. The grounds of detention are supported by the above referred statements of the witnesses. The statements do disclose that the petitioner has been carrying on the activities which disturbs the public tranquillity. The petitioner is alleged to have extorted money from a street vendor. On refusal of payment of such money, the vendor's cart was overturned and he was robbed of his day's income. The witness was also beaten. In the another incident, the petitioner is stated to be in the habit of waiting outside Mahadev Temple and to harass the ladies and the young girls passing-by. Still in another incident, the petitioner is stated to have beaten the people who had refused to give extortion money.

Learned advocate Mr. Soni has challenged the order of detention on the grounds - (a) the representation against the order of detention made by the petitioner to the Government was not decided expeditiously; (b) the representation made to the Advisory Board has not been decided instead the Advisory Board has forwarded the representation to the Government

for its decision, and thus, the Advisory Board has abdicated its power; (c) the incidents narrated in the grounds of detention even if were true would amount to the breach of law and order and in no circumstances, it can be said to be prejudicial to the maintenance of public order; (d) the order of detention has been made on extraneous material not supported by any evidence. In support of his contentions, Mr. Soni has relied upon the judgements of the Supreme Court in the matter of Arun Ghosh v. State of West Bengal [AIR 1970 SC 1228], and Mehboob Khan Nawab Khan Pathan v Police Commissioner, Ahmedabad & Anr. {AIR 1989, SC 1803}; and of this Court in the matter of Babubhai Gulambhai Goas v. State of Gujarat & Ors. [1987 (2) GLR 814]. In the matter of Arun Ghosh [Supra], a case of detention on the ground of eve-teasing was being considered by the Hon'ble Supreme Court. While considering whether such activities can be said to be prejudicial to the maintenance of public order, the Court observed as under :-

"A guest at a hotel may kiss or make advances to half a dozen chamber maids. He may annoy them and also the management but he does not cause disturbance of public order.... ... it would be a case of breach of law and order only. Take another case of a man who molests women in lonely places. As a result of his activities girls going to colleges and schools are in constant danger and fear. Women going for their ordinary business are afraid of being way-laid and assaulted. The activity of this man in its essential quality is not different from the act of the other man but in its potentiality and in its effect upon the public tranquillity there is a vast difference. The act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community. His acts makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken note of by the criminal prosecution agencies."

In the matter of Mehboob Khan Nawab Khan Pathan (supra), the Hon'ble Supreme Court found that while making an orders of detention, the detaining authority had considered not only the incidents referred to in the grounds of detention but also various extraneous matters.

The court, therefore, held that the orders were made mechanically without application of mind. The court, therefore, set aside the orders of detention.

In the matter of Babubhai Gulambhai Goas [Supra], the Division Bench of this Court has held that, 'it is not merely sufficient that a detenu is informed that he may if he so likes, personally appear before the Advisory Board.'

The petition has been contested and the Under Secretary to the Government and also the Detaining Authority have made counter affidavits. In the affidavit made by the Under Secretary to the Government, it is stated that the representation made by the detenu to the Government on 24th September, 1998 was forwarded to the Government by the Superintendent, Special Prison, Bhuj under his communication dated 25th September, 1998 and had reached the concerned section of the Home Department on 30th September, 1998. The same was followed by two public holidays on 1st & 2nd October, 1998 and was considered by the concerned Secretary on 3rd October, 1998. The next date i.e., 4th October, 1998 being the Sunday, a public holiday, the submission was made to the Principal Secretary-Home on 5th October, 1998, which was considered by the Principal Secretary-Home on 6th October, 1998 and was rejected. Under the communication dated 7th October, 1998, the decision of the Government was communicated to the detenu. Considering the above facts stated in the affidavit, I am of the view that the petitioner's representation to the Government was considered and decided as expeditiously as possible and no unavoidable delay has been caused by the concerned authorities.

I have also perused the record. It is not true that the representation made to the Advisory Board had not been decided by the said Board and that the Advisory Board had forwarded the representation of the petitioner to the Government for its decision. The Advisory Board under its order dated 6th September, 1998 has referred to the representation made by the petitioner and it is apparent that the said representation was considered by the Advisory Board before making the order dated 6th September, 1998.

Mr. Soni has vehemently argued that the activities carried on by the petitioner cannot be said to be prejudicial to the maintenance of the public order. I am unable to agree with the contention. As observed by the Hon'ble Supreme Court in the matter of Arun Ghosh

[Supra], the activity which disturbs public tranquillity or even tempo of living amounts to disturbance of the public order. As illustrated by the Hon'ble Supreme Court in the present case, the petitioner is alleged to be indulging into eve-teasing in the public place of the town, such an activity would certainly create a sense of fear and apprehension amongst the residents of the town or atleast of the said locality. Besides, the activities of extortion alleged to be carried on by the petitioner also disturbs the public tranquillity and is prejudicial to the maintenance of the public order. Atleast two witnesses have deposed that the petitioner had beaten the witnesses in the public place with the help of other notorious persons and had also robbed them of their money. These activities carried on in public place would certainly result into breach of peace and public tranquillity. In my view, therefore, the activities alleged to have been carried on by the petitioner cannot be said to be mere breach of law and order, as is canvassed by Mr. Soni.

While making the order of detention, the Detaining Authority has also referred to some activities of drug trafficking and transport of alcoholic substances being carried on by the petitioner. Upon perusal of the record, I do find that the said observation made by the Detaining Authority is not supported by any material on record. Neither of the offences registered against the petitioner is in respect of drug trafficking nor any witness has deposed against the petitioner in respect of drug trafficking or dealing in drugs or alcoholic substances. In the circumstances, I am required to hold that the Detaining Authority has relied upon the extraneous matter which does not form part of the records nor it has been supplied to the petitioner, depriving him of his right to representation against such material. In view of the judgement of the Supreme Court in the matter of Mehboob Khan Nawab Khan Pathan [Supra], it is, therefore, held that the impugned order of detention is vitiated for the said reason. It may also be noted that in respect of offence registered as CR No. 95 of 1998 in Deesa Police Station, the petitioner has been detained in the judicial custody since the month of May, 1998.

The impugned order of detention, Annexure-A to the petition, is therefore, quashed and set-aside. The petitioner be set free; if not required in any other case. Rule is made absolute.

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